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GOVERNOR

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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2011-05
35 Butterfield Terrace
Amherst, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26 H and Chapter 6, section 201, to determine whether to affirm, reverse or modify an Order of the Town of Amherst Fire Department requiring Phillip McCarty, (hereinafter referred to as the "Appellant") to install automatic sprinklers in a building owned by him located at 35 Butterfield Terrace, Amherst, MA.

B) Procedural History

By written notice dated June 15, 2011 and received by the Appellant on June 15, 2011, the Town of Amherst Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellant's building, located at 35 Butterfield Terrace, Amherst, MA. The Appellant filed an appeal of said Order with this Board on July 8, 2011. The Board held a hearing on this matter on August 10, 2011, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Lawrence J. Farber, Esq. Appearing on behalf of the Amherst Fire Department were Assistant Chief Donald R. McKay, Firefighter John P. Kennedy, and Amherst Building Inspector, David Waskiewicz.

Present for the Board were: Maurice Pilette, Chairman; Thomas Coulombe; Deputy Bartholomew Shea, Designee, of the Boston Fire Commissioner; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the building located at 35 Butterfield Terrace, Amherst, MA, is subject to the automatic sprinkler requirements of M.G.L c.148, s. 26H?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal filed by Appellant
3. Order of Notice of the Amherst Fire Department
4. Notice of Hearing to the Appellant
5. Notice of Hearing to the Amherst Fire Department
6. Copies of two Memoranda that accompanied the hearing notices
7. Appellant's Submission (items 1-10)
8. Agreement of Parties and Release of any claims – Appellant
9. Amherst Fire Department's Submission (items A-G)

E) Subsidiary Findings of Fact

- 1) By written notice dated June 15, 2011 and received by the Appellant on June 15, 2011, the Town of Amherst Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellants' building, located at 35 Butterfield Terrace, Amherst, MA. An appeal of said Order was filed on July 8, 2011. The Board held a hearing on this matter on August 10, 2011, at the Department of Fire Services, Stow, Massachusetts.
- 2) On or about 1990, the Town of Amherst adopted the provisions of M.G.L. c. 148, s. 26H, a local option law. This law requires the installation of a system of automatic sprinklers in certain lodging or boarding houses. Said section defines a lodging house or boarding house subject to said law, as a house where lodgings are "let to six or more persons not within the second degree of kindred to the person conducting it."
- 3) According to testimony, the Town of Amherst also has a bylaw that prohibits not more than four unrelated individuals to live in any single-family home.
- 4) The representative of the Appellant testified that the property is a single-family home that was purchased by the Appellant in 2005. The home consists of approximately 1,805 sq. ft. and features four bedrooms and two bathrooms. Since 2008, the Appellant has leased the home using the services of a local property management company. The most recent lease term for the home began in June 2011. Four college students signed the lease.
- 5) The representative of the Appellant testified that the home has been for sale since about the time of the execution of the most recent lease. The Appellant indicated that in anticipation of the sale, the Amherst Fire Department conducted a smoke detector inspection of the premises. It was during this inspection that the Amherst Fire Department, after speaking to one or more of the occupants and viewing the interior, determined that six or more individuals were living in the home. This conclusion lead to the issuance of the Order to install sprinklers in accordance with the provisions of M.G.L. c. 148, s. 26H.

- 6) The representative for the Appellant stated that the owner of the property was not aware that more than four persons were living in the home. He indicated that if the owner had been aware, he would never have allowed it and indicated that as soon as the homeowner learned about the additional occupants, the lease was immediately terminated by written agreement and all tenants pursuant to said agreement vacated the premises. The representative indicated that the illegal use of the property was apparently arranged through a summer sublease without the knowledge of the landlord/owner.
- 7) Appellant believes that the action of the Amherst Fire Department to require the building to be considered a lodging house and therefore sprinkled, is misguided since such a conclusion was based upon the occupancy of six or more individuals in violation of the lease and without the knowledge of the owner/landlord.
- 8) In support of the Amherst Fire Department's position, Assistant Chief McKay testified that the Order of Notice was issued based upon information that the building had six rooms, including a sunroom that was apparently used as a bedroom when he conducted a smoke detector inspection at the property. He indicated that the property had characteristics of a rooming house, with each sleeping area having doors and locks. The fire department had reason to believe that rent from all the occupants was being paid directly to the owner. A witness for the Fire Department said that at least one of the occupants at the house was interviewed and indicated that there were 6 people currently living there.
- 9) The Assistant Chief indicated that boarding houses are allowed in the Town of Amherst, but only by special permit. Further, he confirmed that the Town zoning laws restrict not more than four (4) unrelated individuals to live in the same property.
- 10) The Amherst Building Inspector testified that the property is a single family home and has always been classified as a single family home.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The Board finds that on or about 1990, the Town of Amherst adopted the provisions of M.G.L. c. 148, s. 26H.
- 2) The building located at 35 Butterfield Terrace, Amherst, MA is classified as a single family home. It appears that in the recent past the subject house was occupied by six or more persons not related to the landlord. The Board finds that the subject property was leased by the owner to four individuals. Although it may have been sublet to 2 additional individuals, the Board finds that owner was most likely not initially aware of additional persons who may have resided in the house. When the owner became aware that there were more people living in the home than appeared on the lease, the lease was voided and all tenants vacated the home pursuant to a subsequent written agreement executed by the landlord and the original tenants.
- 3) Six or more unrelated individuals may have, in the recent past, lived in the subject home and were paying rent to the landlord, on either a direct or indirect basis. Such activity in many

instances could be an indication that the house is being operated as a lodging house or boarding house and therefore subject to the enhanced sprinkler provisions of M.G.L. Chapter 148, s. 26H. However, the Board concludes that such expanded occupancy was contrary to the written lease executed by the owner/landlord and without the knowledge of the owner/landlord.

Additionally, such use was in clear violation of the local zoning bylaws, which restricts the number of residents in a single-family house.

- 4) The representative of the Appellant acknowledged at the hearing that the building would be subject to the provisions of M.G.L. Chapter 148, s. 26H and the local permitting and zoning requirements if it continued to be let to six or more unrelated individuals as described in the statute. The Board understands the house is currently vacant pending transfer of the property.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **reverses** the Order of the Amherst Fire Department to require the installation of an adequate system sprinkler protection in the subject building in accordance with the provisions of M.G.L. Chapter 148, s. 26H.

However, this determination is based upon the following conditions:

1. The house is not used as a lodging or boarding house as defined in M.G.L. c. 148, s. 26H;
2. The Appellant shall record a copy of this decision in the Registry of Deeds in the county wherein this property is located and forward a copy of said filing with this Board; and
3. The current owner shall notify any prospective purchaser about this determination.

H) Vote of the Board

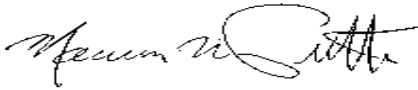
Maurice Pilette, Chairman	In Favor
Thomas Coulombe	In Favor
Bartholomew Shea, Designee, Boston Fire Department	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

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I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Maurice Pilette, PE, Chairman

Dated: September 9, 2011

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL,
RETURN RECEIPT TO:**

Lawrence J. Farber, Esq.
30 Boltwood Walk – Front 101
Amherst, Massachusetts 01002-2187

Chief W. Tim Nelson
Assistant Chief, Donald R. McKay
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